

Services Added to Use Tax FAQ (Updated 11-30-07)

If a Michigan company does business out-of-state, would it be required to collect and remit use tax?

Answer:

A Michigan company which engages in a sales transaction must "source" the sale as required by section 20 of the Use Tax Act, MCL 205.110, and must collect the applicable use tax from the consumer. If the Michigan company's sale is subject to use tax and is sourced to a Michigan location, the seller must collect and remit Michigan use tax. For a sale that is "sourced" to a location outside of Michigan, the seller is not required to collect and remit Michigan use tax. Generally, if possession of tangible personal property is not taken in Michigan, or if a service is not received by the purchaser in Michigan, the seller is not obligated to collect and remit Michigan use tax.

Is a church responsible for paying the new use tax on services, even though it is exempt from sales tax as a 501(c)(3) organization?

Answer:

Michigan's use tax is levied for the privilege of using, storing, or consuming tangible personal property in Michigan. Unlike Michigan's sales tax, which is levied on the seller, the use tax is levied on the purchaser, though the seller has an obligation to collect the tax from the purchaser and remit the tax to the State.

When a church acts as a purchaser, it is entitled to exemption from use tax under section 4(1)(i) of the Use Tax Act, MCL 205.94(1)(i), which exempts property or services sold to a regularly organized church or house of religious worship (except for certain vehicles and except where the purchased property/service is used in activities that are mainly commercial enterprises).

When a church acts as a seller of tangible personal property or a service that is subject to use tax, the church has the same obligation to collect and remit use tax as any other seller.

How does the expansion of the Use Tax Act to certain services impact a non-profit organization (described in NAICS code 56172) that provides janitorial services to its customers?

Answer:

Though Michigan's use tax is levied on the purchaser, the seller has an obligation to collect the tax from the purchaser and remit the tax to the State. Unless the purchaser of a taxable service claims an exemption from the use tax, the seller, regardless of the seller's status (e.g., a "non-profit" organization, a church, a school, a unit of government), has the obligation to collect and remit the use tax.

If a contract for taxable services is entered into prior to December 1, 2007, with payment at the time of signing and the services to be provided after December 1st would the charges be subject to use tax?

Answer:

Yes, the tax is imposed and must be reported in the period in which the service is

provided. The date of payment of the service does not affect the reporting period. Taxable services performed after December 1, 2007 will be subject to Michigan use tax.

The date the service is performed or provided is when the service is made available to, used or consumed by, the customer or their representative.

How would a taxpayer that must include the use tax on taxable services in the stated price, such as a coin operated blood pressure testing machine, comply with Section 16 of the Use Tax Act [MCL 205.106]?

Answer:

Section 16 of the use tax act requires a taxpayer to collect the tax as required by the act. However, certain business practices such as services rendered through a coin operated machine do not lend themselves to the addition of use tax to the charge for the services. In these instances the department will allow a taxpayer to include the 6% use tax in the posted price for the service.

When preparing their monthly or quarterly use tax worksheet, specifically line 3c, the taxpayer will be allowed to report the revenue received from rendition of the services net of the use tax collected on such charges.

Does the service tax apply to interstate trucks for hire going from state to state?

Answer:

Public Act 93 of 2007 which is effective December 1, 2007 imposes 6% use tax on a limited number of services as listed in the Act. Subject to the tax are transit and ground passenger transport services as described in the North American Industry Classification System group code 4853. However, the service you describe appears to be that of a general freight-long distance hauler as described in NAICS code 484121 which is not one of the services subject to use tax under the new Act.

Are service contracts that are purchased as an option for repair of cellular telephones and billed as one fee but collected pro-rata on the customer's monthly billing statement subject to use tax.

Answer:

No, the listing for service contract services is found in MCL 205.93d(t) [Section 3d] of the Use Tax Act. This section provides that among other items for the service to be taxable the service must be provided "in exchange for the buyers' single payment" It is the department's determination the statute requires one physical payment and that such payment collected pro-rata over numerous months would not meet the requirement for a "single payment".

Is a massage therapist working in chiropractor's office subject to use tax?

Answer:

Michigan use tax is imposed on various specific services performed in this state as provided in Section 3d of the Use Tax Act. The Act makes references to the North American Industry Classification System (NAICS) codes in describing a majority of the services subject to tax.

Massage services performed by a massage therapist working in a chiropractor's office is described in the NAICS code section 621399 and would not be subject to Michigan use tax. Services performed by a licensed chiropractor are described in NAICS code 621310 and are also not subject to tax.

Massages performed in a massage parlor are described in NAICS code section 812199 and are subject to Michigan use tax.

You have asked what is the department's definition of the phrase "in exchange for the buyers' single payment" as found in MCL 205.93d(t).

Answer:

The phrase "in exchange for the buyers' single payment" found in MCL 205.93d(t) [Section 3d] of the Use Tax Act serves to limit the imposition of the 6% use tax to certain service contract services. In these service contracts the seller agrees to provide repair, maintenance, or replacement of one or more items of tangible personal property during a specific period of time, which services the buyer is not required to buy in connection with the purchase of tangible personal property.

However, payment under the service contract must be a single payment to subject the services to the use tax. The department views the term "single payment" as just that: one payment. A contract requiring or allowing multiple payments where such multiple payments are actually made would not be subject to use tax.

It is important to keep in mind that the "single payment" criteria applies only to service contract services.

If my only taxable sales are the sales of services subject to use tax will my business also need a sales tax license?

Answer:

No, a Michigan sales tax license is required for any business that is involved in making sales at retail of tangible personal property. If you do not sell tangible personal property you will not be required to obtain a sales tax license.

Are charges by a musician when hired directly by the wedding family subject to use tax? What if the musician is hired by a wedding planner?

Answer:

The charges by the musician to provide music at a wedding ceremony is described in the North American Industry Classification System (NAICS) under number 711130. Services provided under this section are not subject to use tax.

However, when the musician is hired by the wedding planner and billed to the customer as part of the planner's charges the total amount charged by the planner would be subject to tax even if separately itemized on the statement provided by the planner to the wedding party.

Wedding planning services are described under NAICS code 812990.

What is "NAICS"?

Answer:

"NAICS," as referenced in 2007 PA 93, is the 2002 edition of the North American Industry Classification System, produced by the United States Office of Management and Budget. (The 2002 NAICS Code can be accessed online at www.census.gov/epcd/naics02.) While the NAICS classifies businesses, the Use Tax Act specifically provides that certain service transactions are subject to use tax based on the description of that service in the applicable NAICS Code and not on the classification of the person/establishment providing that service. This comports with the transactional nature of the use tax. The NAICS code system is a two-digit through six-digit hierarchical classification code system. The classification system operates so that the coverage is progressively narrower with the successive addition of digits; that is, a NAICS classification identified by a specific number includes other classifications identified by numbers containing additional digits where the longer number begins with the same digits as the original classification number. For example, Business Service Center services (NAICS 56143) also includes Private Mail Center services (NAICS 561431) and Other Business Service Center, including Copy Shop, services (NAICS 561439).

How often do I need to file a tax return for sales, use and withholding taxes?**Answer:**

Your total sales, use and withholding tax liability for a calendar year determines the filing frequency of Form 160, Combined Return for Michigan Taxes:

- If your annual tax due is less than \$750 you would file annually.
- If your annual tax due for the year is between \$750 and \$3,600 you would file quarterly.
- If your annual tax due for the year is over \$3,600 you would file monthly

I paid tax to another state/country on items purchased there. Is use tax still owed to Michigan?**Answer:**

Yes. Michigan allows credit of up to 6% sales or use tax properly paid to another state or local unit of that state. Michigan does not have a provision for credit of purchases delivered or brought into Michigan from foreign countries or U.S. Territories.

Can a customer tell a seller not to charge sales or use tax because they will pay it directly to Michigan?**Answer:**

Yes, if a customer provides a copy of their direct pay permit authorized by the Michigan Department of Treasury to pay tax directly to the State.

Why do some out-of-state businesses collect use tax when other businesses do not?**Answer:**

Michigan, like other states, can require a business to collect and remit use tax only if the business has a physical presence in this state. Examples of a presence in a state would be a store, warehouse, or employees or representatives of the business. They may also volunteer to collect and remit use tax for sales in Michigan.

